

Special Civil Application No 6920 of 1987

Date of decision: 12th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

BHASKERRAI B THAKER

vs

STATE OF GUJARAT

Appearance:

Shri S TRIPATHI, Advocate, for the Petitioner.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

12th February 1996

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.3 herein) on 23rd March 1984 under section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 12th

October 1987 inter alia in Appeal No.Rajkot-812 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.3 declared the holding of the petitioner to be in excess of the ceiling limit by 19.44 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form in the office of respondent No.3 herein with respect to his holding within the urban agglomerations of Rajkot, Vadodara and Ahmedabad. It came to be duly processed by respondent No.3. After observing all necessary formalities according to law, by his order passed on 23rd March 1984 under section 8 (4) of the Act, respondent No.3 declared the holding of the petitioner to be in excess of the ceiling limit by 19.44 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-812 of 1984. It was heard along with Appeals Nos.814 of 1984 and Rajkot-73 of 1984. By the common order passed on 12th October 1987 in the aforesaid three appeals, the petitioner's appeal inter alia came to be dismissed. A copy of the appellate order is at Annexure-B to this petition. The aggrieved petitioner has thereupon moved this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. As rightly submitted by learned Advocate Shri Tripathi for the petitioner, the house property which was in existence prior to coming into force of the Act has wrongly been included in the holding of the petitioner contrary to the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that it does not transpire clearly from the record whether or not such construction was authorised prior to coming into force of the Act. According to him, the matter should be remanded to respondent No.3 for making necessary inquiry in that regard.

4. Learned Assistant Government Pleader Shri Patel for the respondents appears to be right in his submission that the material on record does not disclose whether or not the house property was an authorised construction. It however cannot be gainsaid that it was in existence prior to coming into force of the Act as the declaration in the prescribed form under the Act was made with respect to the holding of the petitioner as on 17th February 1976. It is obvious that he must have shown his house property therein and it would mean that it was in existence prior

to coming into force of the Act. Since the area declared surplus is merely 19.44 square metres and since the area represented by the house property is as large as 486.09 square materials, it is not necessary to remand the case to respondent No.3. for making any inquiry whether or not the construction was authorised. It has to be presumed to be authorised in absence of any material to the contrary on record. That house property will have to be excluded from the holding of the petitioner in view of the aforesaid binding ruling of the Supreme Court. If that be so, the holding of the petitioner would not be in excess of the ceiling limit in any manner.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad on 23rd March 1984 under section 8 (4) of the Act at Annexure-A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 12th October 1987 inter alia in Appeal No.Rajkot-812 of 1984 at Annexure-B to this petition is quashed and set aside. It is hereby declared that the holding of the petitioner is not in excess of the ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.

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